

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GLOBE IMPORTS LIMITED, INC.,
GLOBE PROPERTIES, and ROBERT
MAXON,

Plaintiffs,

v.

ALLIED PROPERTY AND CASUALTY
INSURANCE CO. and NATIONWIDE
INSURANCE,

Defendants.

No. C 14-3676 CW

FINDINGS OF FACT
AND CONCLUSIONS OF
LAW AFTER BENCH
TRIAL

A fire damaged two buildings and destroyed a third. All three buildings are owned by Plaintiff Globe Imports Limited, a division of which is Plaintiff Globe Properties. Docket No. 63, Joint Pretrial Conference Statement (JPCS) at 1.¹ At the time, Plaintiffs held a commercial property insurance policy with Defendant Nationwide Mutual Insurance Company.² The parties dispute coverage for many of the costs related to repair and replacement of these buildings.

For the bench trial in this matter, the Court instructed the parties to offer their direct testimony through the designation of declarations and deposition transcripts. The parties have filed trial briefs with these declarations, deposition transcripts and

¹ All citations to the JPCS are to undisputed facts.

² Claims against the other named defendant, Allied Property and Casualty Insurance Company, were dismissed by stipulation. Docket No. 32.

1 documentary evidence and also include citations to the material
2 that they submitted previously with the earlier motions. The
3 parties were given the opportunity to cross-examine witnesses
4 during the bench trial. The parties also filed post-trial briefs
5 and written closing arguments.

6 Nationwide objects to some of the evidence submitted by
7 Globe. The Court has reviewed these evidentiary objections and
8 has not relied on any inadmissible evidence. The Court will not
9 discuss each objection individually. To the extent that the Court
10 has relied on evidence to which one side has objected, such
11 evidence has been found admissible and the objections are
12 overruled.

13 The Court now enters its findings of fact and conclusions of
14 law.

15 BACKGROUND FINDINGS OF FACT

16 On December 8, 2006, a fire in Eureka, California damaged two
17 buildings and destroyed a third building owned by Globe. JPCS at
18 1. One of the damaged buildings, Building 1, was located at 527,
19 531 and 535 Third Street. Id. at 2. The other damaged building,
20 Building 3, was located at 526 Opera Alley. Id. Building 2, the
21 destroyed building, was located at 224, 226 and 236 G. Street.
22 Id.

23 I. Buildings

24 Building 2 comprised a first floor used as a meat market, a
25 second floor originally used as a dance hall with a sprung dance
26 floor and a mezzanine area above the second floor. Docket No. 68,
27 Maxon Dec. in Opp. ¶ 6; Transcript at 27:17-28:4. The stairway
28 leading to the second floor had two landings. Maxon Dec. in Opp.

¶ 7. It was lined with ornate wainscot and heavy trims and finishes. Id. Heavy trim and wainscot were also prevalent at the top of the stairway, in the foyer and in adjacent dressing rooms with showers and bathrooms. Id. ¶¶ 7-8. The foyer opened into the dance hall, which was 3,516 square feet. Id. ¶ 9. The dance hall was surrounded by ornate framed plaster arches, wainscot, heavy trim and ornate plaster walls with large double hung windows. Id.; see also Ex. 56 at 7, 11. Three staircases led up to the mezzanine level, which comprised a balcony to observe the dance floor. Maxon Dec. in Opp. ¶ 10; see also Ex. 56 at 6. Building 2 was constructed using substantial amounts of old growth redwood. Docket No. 59, Penfold Dec. ¶ 9.

Repairs have been performed on Buildings 1 and 3, but Building 2's reconstruction has not yet begun. A "different building" is going to take the place of Building 2. Transcript at 27:12-14. Instead of two stories and a mezzanine, there will be three stories. Id. at 27:15-28:16. The new building will differ from the old in other ways. It will use drywall instead of lath and plaster. Id. at 29:1-3. Further, it will use a concrete mat slab, which means there will not be any redwood base beneath it, id. at 29:4-16, and there will be no redwood sheathing on the inside of the exterior or interior walls, Depo. Desig., Ex. A at 113:15-20. The new building will also have steel framing, which Building 2 did not have. Id. at 112:23-25, 113:22-25. Using the steel will "deliver the same sense of quality, the esthetics, sound deadening, all those things." Id. at 114:5-7.

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II. Contract

Nationwide and Globe entered into a commercial property insurance contract for the period January 1, 2006 to January 1, 2007. JPCS at 2. Under the Commercial Property Statement of Values, the contract contains a blanketed \$4,501,700 limit. Id. Buildings 1 and 2 together are assigned a \$1,775,300 value. Building 3 is assigned a \$98,200 value. Id. The general coverage provisions are as follows:

A. Coverage

We [Nationwide] will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this Section A.1., and limited in A.2., Property Not Covered, if a Limit of Insurance is shown in the declarations for that type of property.

a. Building, meaning the building or structure described in the Declarations . . .

2. Property Not Covered

Covered Property does not include:

d. [W]alks, patios or other paved surfaces;

f. The cost of excavations, grading, backfilling or filling;

g. Foundations of buildings, structures, machinery or boilers if their foundations are below:

1) The lowest basement floor; or

2) The surface of the ground, if there is no basement;

h. Land (including the land on which the property is located)

m. Underground pipes, flues or drains;

. . .

Id. at 2-3. The contract provides that Nationwide "will determine the value of the Covered Property in the event of loss or damage" at "actual cash value." JPCS at 3. "Actual Cash Value" is defined as follows:

Actual cash value is calculated as the amount it would cost to repair or replace Covered Property, at the time of loss or damage, with material of the like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence. Actual cash value applies to valuation of Covered Property regardless of whether the property has sustained partial or total loss or damage.

Globe purchased optional replacement cost coverage under the insurance contract. Id. at 2. The contract states:

G. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

. . .

3. Replacement Cost

a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Loss Condition, Valuation, of this Coverage Form.

. . .

d. We will not pay on a replacement cost basis for any loss or damage:

- (1) Until the lost or damaged property is actually repaired or replaced; and
 - (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.
- With respect to tenants' improvements and betterments, the following also apply:

. . .

(4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.

e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:

- (1) The Limit of Insurance Applicable to the lost or damaged property;
- (2) The cost to replace the lost or damaged property with other property:
 - a. Of comparable material and quality; and
 - b. Used for the same purpose; or
- (3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

f. The cost to repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

Id. at 3-4.

The contract includes coverage for increased costs of construction in the Additional Coverages provisions:

e. Increased Cost of Construction

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased cost incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage.
- (3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.
- (6) . . . If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, . . . the most we will pay under this Additional Coverage, for the damaged building, is the lesser of \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable coinsurance percentage.
This amount payable under this Additional Coverage is additional insurance.
- (7) With respect to this additional coverage;
 - (a) We will not pay for the Increased Cost of Construction:
 - i. Until the property is actually repaired or replaced, at the same or another premises; and
 - ii. Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
- (8) This Additional Coverage is not subject to the terms of the Ordinance or Law Exclusion, to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.

Id. at 5-6.

To date, Nationwide has paid \$1,609,242 toward repairing Buildings 1 and 3 and for the actual cash value of Building 2.

Id. at 6. Nationwide paid Globe an additional \$93,347 for demolition, debris removal, fencing and security, bringing the total payment to \$1,702,589. Id. It held back \$92,035 from its

1 payment to Globe pursuant to contract provisions that require
2 actual replacement of the building. Id.

3 STANDARD OF REVIEW AND CONCLUSIONS OF LAW

4 "The burden is on an insured to establish that the occurrence
5 forming the basis of its claim is within the basic scope of
6 insurance coverage." Aydin Corp. v. First State Ins. Co., 18 Cal.
7 4th 1183, 1188 (1998). However, an insurer bears the burden of
8 showing that a policy exception or exclusion applies. See, e.g.,
9 Clemmer v. Hartford Ins. Co., 22 Cal. 3d 865, 880 (1978) (stating
10 that the "burden of bringing itself within any exculpatory clause
11 contained in the policy is on the insurer"); Prichard v. Liberty
12 Mut. Ins. Co., 84 Cal. App. 4th 890, 910 (2000) ("The insurer has
13 the burden of establishing the applicability of an exclusion.").

14 "Replacement cost is the estimated cost to construct, at
15 current prices, a building with utility equivalent to the building
16 being appraised, using modern materials and current standards,
17 design, and layout." Fire Ins. Exchange v. Super. Ct., 116 Cal.
18 App. 4th 446, 468 (2004).

19 FINDINGS OF FACT

20 The parties dispute several costs related to each of the
21 three buildings.

22 I. Building 1

23 On December 10, 2007, Globe submitted to Nationwide a claim
24 for \$373,928 for repairs it had completed on Building 1. Ex. 1.
25 The parties agree that \$35,497 of the \$373,928 was not covered
26 under the Contract. Globe also claims that it is owed \$86,690 for
27 Robert Maxon's work as a Project Manager. The Court discusses
28

1 each disputed cost enumerated in the parties' Disputed Items Chart
2 (Chart) below. Docket No. 102.

3 a. Gas Relocation Service

4 Globe submitted for reimbursement a cost of \$2,824 for "GAS
5 SERVICE RELOCATION/REARRANGEMENT COSTS." Ex. 1 at 3. Pacific Gas
6 & Electric's invoice for this service was dated May 11, 2007. Id.
7 The Court finds that this service relates to Unit 535, within
8 Building 1, which had gas lines in it before the fire. Ex. 1 at
9 64; Transcript at 364:12-16. The fire destroyed that gas line.
10 Id. at 365:3-12. Although Nationwide argues that this cost
11 related to adding a gas line to a different unit, the Court finds
12 Globe's evidence and testimony more clear and credible.

13 The Court finds that Globe is entitled to the cost of the gas
14 relocation service because the loss of gas to Unit 535 was caused
15 by the fire. See JPCS at 2.

16 b. Gas Line Installation

17 Globe had a gas line installed that serviced Building 1 and
18 Building 3. The installation cost \$5,666; that cost is divided in
19 half between the two buildings. See Ex. 1 at 79. The work
20 associated with this cost was two-thirds trenching and one-third
21 gas piping installation. Transcript at 13:6-14:6; Ex. 1 at 80-82.

22 The Court finds that Globe is not entitled to two-thirds of
23 this amount because trenching, a form of excavation, is not
24 covered under the contract. See JPCS at 3. It is, however,
25 entitled to \$944, the other third of the \$2,788 attributable to
26 Building 1.

27 //

28 //

1 c. Re-Route Electrical

2 The fire destroyed electrical service to Building 1.
3 Transcript at 225:18-21. The parties stipulated at trial that
4 much of the repair cost is excluded as excavation. Id. at 232:20-
5 25. The remaining costs, amounting to \$1,287, were for materials,
6 namely underground piping, fittings, couplers, connectors and sand
7 backfill. See id. at 233:3-11. These costs fall under the
8 coverage exceptions for backfilling and underground pipes. See
9 JPCS at 3. Therefore, Globe is not entitled to any of these
10 costs.

11 d. Power from Transformer

12 Before the fire, Buildings 1 and 3 combined received 600 amps
13 of electrical power. Transcript at 15:7-16, 225:22-226:3. The
14 Court finds the evidence supporting Nationwide's theory that
15 Building 1 and Building 3 had 300 amps combined before the fire
16 less credible than Globe's. Because the fire destroyed electrical
17 service to Buildings 1 and 3, Kneaper Electric installed a 600-amp
18 pull can, a 200-amp meter and a 100-amp meter that would service
19 both buildings. Ex. 1 at 83; Transcript at 14:20-25, 15:5-6.
20 Kneaper's services cost \$12,804. Ex. 1 at 83.

21 Because Kneaper replaced property that was damaged, rather
22 than adding increased electrical power, Globe is entitled to this
23 money under the contract. See JPCS at 2.

24 e. Masonry Sealer

25 Globe spent \$116 on masonry sealer for the interior brick.
26 Transcript at 16:13-19; Ex. 1 at 126. The masonry sealer was
27 applied to the brick to stop the efflorescence caused by excessive
28 moisture following the fire. Transcript at 16:20-25, 60:11-25.

1 The Court finds that the masonry sealer was a necessary
2 repair cost. See JPCS at 2, 4. Globe is entitled to \$116.

3 f. Demolition of Abandoned Gas and Water Lines

4 For \$252, Johnston Construction performed demolition of gas
5 lines that were under Building 1 and that served Building 2.
6 Transcript at 215:20-23; Chart. These lines were hanging from the
7 crawl space, Transcript at 216:13-17, and were in the way of
8 electrical work, id. at 216:17-18, 222:1-11. Using the crawl
9 space was the most efficient method for the electrical rewiring.
10 Id. at 222:8-11.

11 The Court finds that this cost was not necessary and
12 therefore is not covered under the contract. Globe is not
13 entitled to this money.

14 g. Repairs for Roof Ponding

15 A ponding problem occurred on the roof of Building 1 as a
16 result of the new parapet wall and cricket system. Ex. 4 at 303.
17 Building 1's roof had only limited ponding problems before the
18 fire because it was an essentially flat roof with a slope.
19 Transcript at 280:19-281:6. The parapet that had existed was
20 damaged and destroyed by the fire. Id. at 68:22-24.
21 Reconstruction of a parapet wall, particularly its bracing,
22 blocked drainage from the roof. Transcript at 66:14-18, 67:2-6,
23 69:2-5, 217:2-5. The ponding was so serious it caused water to go
24 through skylights into Building 2. Id. at 63:12-64:14. The cost
25 of these repairs was \$5,965. Chart.

26 The Court finds that the ponding problem was not a result of
27 the fire. Therefore, this cost is not covered under the contract,
28

1 JPCS at 2, and Globe is not entitled to reimbursement for these
2 repairs.

3 h. Demolish and Remove Brick Footing

4 Johnston Construction demolished and removed brick footing
5 from Building 2 and charged \$1,392. Ex. 1 at 146. This footing
6 was very close to Building 1's east wall; removing it was required
7 to perform repairs to the 2x6 laminated firewall. Transcript at
8 211:10-18. Nationwide argues that the brick footing must have
9 extended below the ground and, as a result, its removal required
10 excavation. The Court is not persuaded.

11 The Court finds that Nationwide did not satisfy its burden of
12 showing that the excavation exception applies. Thus, Globe is
13 entitled to this \$1,392.

14 i. Painting Expense

15 In 2002, Building 1 had special interior painting with a lime
16 peel texture and a light finish. Transcript at 212:8-12. The
17 Court finds that special texturing existed because it finds Pete
18 Johnston, Globe's general contractor, credible. The 2002 finish
19 required at least one coat of primer and two finish coats, all
20 sprayed and back rolled. Id. at 212:13-18. After the fire, the
21 areas to be painted required much preparation, including cleaning,
22 sanding and caulking. Id. at 370:14-18. Globe paid \$57,236, the
23 amount charged for the painting. Id. at 270:15-17, 372:19-21.
24 Nationwide estimated that the painting should have cost \$25,248.
25 Id. at 270:18-20; Chart.

26 Because repainting these interior walls required the special
27 treatment described by Globe, the Court finds that this expense
28

1 was necessary. Globe is entitled to reimbursement for the money
2 it paid.

3 j. Management Fee

4 Plaintiff Maxon claims a management fee in the amount of
5 \$86,690. Transcript at 69:21-24. Maxon's compensation as project
6 manager for Globe was part of his normal salary as an employee of
7 Globe, Depo. Desig., Ex. A at 18:11-14, and Globe incurred no
8 additional costs for Maxon's work as project manager following the
9 fire, id. at 184:4-8.

10 The Court finds that no management fee was "actually spent"
11 that was "necessary to repair" the damaged property. JPCS at 4.
12 Globe is not entitled to this money.

13 In sum, Globe is entitled to \$329,038 in reimbursement for
14 repairing Building 1. This sum is equal to the amount claimed
15 (\$373,928) minus the agreed-upon non-covered costs (\$35,497) minus
16 the disputed costs to which Globe is not entitled (\$9,393³).

17 II. Building 2

18 Building 2, which was destroyed in the fire, has not yet been
19 rebuilt. Instead, Globe and Nationwide propose competing bids.
20 Nationwide hired Charles Allen, who prepared bids to reconstruct
21 Building 2. Allen Dec. at 2:13-15. Allen was willing to perform
22 any work at the prices listed in his bids. Id. at 2:16-18.
23 Nationwide's numbers on the Chart are equal to Allen's bid numbers
24 multiplied by 1.2 to account for ten percent profit and ten

25
26 ³ As discussed above, this number includes \$1,889 paid for
27 gas line installation, \$1,287 paid for rerouting electrical, \$252
28 paid for demolishing a gas and water line and \$5,965 for repairing
the roof ponding.

1 percent overhead. Transcript at 152:19-24, 294:15-18. Globe
2 hired Les Charter to provide a cost estimate to reconstruct
3 Building 2. Charter Dec. ¶ 6. The parties agreed to apply a
4 multiplier of 1.088 to Charter's estimates so that Charter's
5 profit and overhead percentages align with Allen's. Transcript at
6 153:5-10. The parties do not dispute that several costs amounting
7 to \$519,418 are due. Chart. The Court rules on the disputed
8 costs below.

9 a. Architecture/Engineering

10 Globe's estimate is \$295,509. Ex. 9 at 285. This number is
11 twelve percent of the total bid. Transcript at 156:8-11, 186:22-
12 24. Charter testified that twelve percent is standard in the
13 United States. Id. at 187:2-4. However, this percentage does not
14 account for the difference in work required to rebuild a destroyed
15 building rather than to build a new building. Id. at 157:10-13.
16 Allen's bid for Nationwide is \$63,100. Allen Dec. at ALLCO 230.⁴

17 The Court finds that Nationwide's price of \$63,100 is
18 appropriate under the contract's definition of replacement cost.
19 See JPCS at 3.

20 b. Excavation, Fill, Demolition

21 Globe's estimate lists a price of \$27,125. The parties agree
22 that this estimate breaks down as follows: \$2,851 for gravel
23 excavation, \$2,685 for demolition and disposal of the perimeter
24 foundation and \$21,600 for demolition and disposal of the slab and
25

26 ⁴ Allen's original bid for this item was \$83,100. However,
27 that bid included \$20,000 for geotechnical work, a cost the
28 parties no longer dispute. See Chart. Charter's original bid
separated geotechnical work from this cost. Ex. 9 at 285.

1 footings. Globe now agrees that it is not entitled to \$2,851 for
2 gravel excavation, so its estimate is \$24,285. Nationwide Br. at
3 5. Nationwide's bid price is \$17,762 for demolition of the slab
4 alone. Allen Dec. at ALLCO 184.⁵

5 The Court finds that Nationwide did not satisfy its burden to
6 show that demolition and disposal of the perimeter foundation
7 constitutes excavation. Globe is entitled to the \$2,685.
8 However, the Court finds that Globe's higher price for demolition
9 of the slab is not necessary. See JPCS at 3. Thus, Nationwide's
10 price of \$17,762 is appropriate. In sum, Globe is entitled to
11 \$20,447 for this cost.

12 c. Utilities Hook-Up

13 Globe estimates that reconnecting power to Building 2 would
14 cost \$81,132. See Ex. 9 at 285 (before 1.088 multiplier);
15 Transcript at 295:17-23. This estimate is based on two premises:
16 that Building 2 originally had 400 amps of power and that Pacific
17 Gas & Electric requires Globe to connect at a new power source
18 that did not exist before the fire. Globe Br. at 9; Reply Br. at
19 5-6. \$38,175 of this sum is related to reconnecting to a new
20 power source. Ex. 9 at 291. Nationwide estimates that the
21 utilities hook-up would cost \$11,736. Transcript at 295:9-15;
22 Allen Dec. at ALLCO 185 (before 1.2 multiplier). Its estimate is
23 based on the premise that Building 2 had only 200 amps of power
24 before the fire and that an undamaged power source is available.
25 Transcript at 298:12-23.

27 ⁵ The amount listed is \$14,802. This is before Allen's
28 multiplier of 1.2 for profit and overhead was applied.

1 Regarding the amperage, the Court finds that Building 2
2 originally had 400 amps, meaning no portion of Globe's estimate
3 results from amperage additions. Id. at 229:9-10. The Court
4 finds Russell Whittaker, the electrician who worked on Buildings 1
5 and 3 after the fire, more credible than Allen on the issue of
6 amperage.

7 Regarding the availability of the power source, the Court
8 finds that Globe failed to meet its burden to prove that
9 connecting to a new power source was "necessary" for replacement.
10 JPCS at 3. Because Globe is not entitled to this portion of its
11 estimate amount, it is entitled to \$42,957 for this cost.

12 d. Brick at Entry

13 Globe estimates that this cost is \$4,837. Ex. 9 at 285
14 (before 1.088 multiplier). Nationwide estimates that this cost is
15 \$2,479. Allen Dec. at ALLCO 227 (before 1.2 multiplier).

16 Globe did not carry its burden to prove that its higher cost
17 is necessary, particularly in light of Allen's testimony that he
18 would be willing to do this work at his bid price. See JPCS at 3;
19 Allen Dec. at 2:16-18. Globe is entitled to \$2,479 for this cost.

20 e. Steel Vault and Door

21 Globe's estimate for this cost is \$25,509: \$17,743 for the
22 steel vault and \$7,766 for the vault door. Ex. 9 at 285, 296
23 (before 1.088 multiplier). Nationwide's estimate is \$17,208.
24 Allen Dec. at ALLCO 210 (before 1.2 multiplier). Nationwide's
25 estimate is based on a door size smaller than Globe's. Compare
26 Ex. 9 at 296 to ALLCO 210.

27 Globe did not carry its burden to prove that its higher
28 estimated cost is necessary. See JPCS at 3. Allen's estimate

1 contained notes for measurements, explaining that he had
2 determined that those measurements were the maximum size possible
3 based on the foundation measured at the site, and on a floor plan
4 and photos. Allen Dec. at ALLCO 210. Charter, on the other hand,
5 got his dimensions from discussions and pictures. He does not
6 recall more specifically how he calculated the dimension of the
7 door. Transcript at 163:25-164:7. Therefore, Globe is entitled
8 to Allen's estimate of \$17,208 for this cost.

9 f. Rough Lumber

10 Globe estimates \$588,696 for this cost. Ex. 9 at 285 (before
11 1.088 multiplier). This estimate includes substantial amounts of
12 old growth redwood. See id. at 300-05. Nationwide estimates
13 \$163,370. Chart.

14 The Court finds that old growth redwood is not necessary to
15 replace Building 2 with a building of equivalent utility, using
16 modern materials and current standards, design and layout. See
17 Depo. Desig., Ex. A at 114:2-8 ("my consultants say that the cost
18 to do that out of wood and comparable materials and for a modern
19 day structure, it can't be done. So we're using a steel and the
20 componentry there to deliver the same sense of quality, the
21 esthetics, sound deadening, all those things, we can achieve with
22 a steel structure much more economically."). Therefore, Globe is
23 entitled to Allen's bid of \$163,370 for rough lumber.

24 g. Redwood Floor Under Concrete Slab

25 Globe estimates that it needs \$62,872 for this cost. Ex. 9
26 at 285 (before 1.088 multiplier).

27 The Court finds that Globe did not carry its burden to prove
28 that there was a redwood floor under the concrete slab that

1 warrants replacement. See JPCS at 3. Globe is entitled to no
2 money for this cost.

3 h. 1x8 Redwood Shiplap Siding

4 Globe estimates it needs \$49,903 for 1x8 redwood shiplap
5 siding on three exterior walls. Ex. 9 at 285 (before 1.088
6 multiplier). Before the fire, there had been exposed redwood
7 shiplap on the north side of the building, Transcript at 84:22-
8 85:1, and redwood shiplap siding underneath a stucco exterior on
9 the south and west walls, id. at 85:2-4. Globe's bid includes all
10 three walls and was priced at \$8.88 per square foot. Ex. 9 at 285
11 (before 1.088 multiplier). Nationwide's bid is for \$9,939, based
12 on a \$5.93 per square foot rate, and includes redwood shiplap only
13 for the north wall. Allen Dec. at ALLCO 226 (before 1.2
14 multiplier).

15 The Court finds that unexposed redwood is not included within
16 the measure of replacement cost under the contract. See JPCS at
17 4. Further, Globe did not carry its burden to prove that its
18 higher price per square foot was necessary or of comparable
19 quality to the pre-fire exposed redwood shiplap. Therefore, Globe
20 is entitled only to Nationwide's bid of \$9,939.

21 i. Main Stairway North End

22 Globe estimates that it would take \$24,178 to reconstruct
23 this stairway. Ex. 9 at 285 (before 1.088 multiplier). Charter
24 based that estimate on eyewitness accounts of the size and
25 finishes. Transcript at 172:24-173:2. Nationwide's bid is
26 \$18,120. Allen Dec. at ALLCO 191-92 (before 1.2 multiplier).

1 Globe failed to carry its burden to prove that its higher
2 cost is necessary for replacement. Globe is entitled only to
3 \$18,120 for the stairway.

4 j. Open Web Pitched Trusses

5 Globe estimates that it will need \$25,629 for open web
6 pitched trusses. Ex. 9 at 285 (before 1.088 multiplier).
7 Nationwide estimated that they would cost \$21,188. Chart;
8 Nationwide Br. at 16. Nationwide points to no evidence in the
9 record that explains its amount.

10 Globe is entitled to the full amount of its estimate of
11 \$25,629.

12 k. Rough Hardware

13 Globe estimates that it will need \$17,660 for rough hardware.
14 Ex. 9 at 285 (before 1.088 multiplier). Charter typically uses a
15 five percent measure but, where materials are more expensive, he
16 lowers that number to three percent, which is what he did here.
17 Transcript at 173:21-174:3. Nationwide estimates that it would
18 cost \$10,565. Chart; Nationwide Br. at 17. Nationwide points to
19 no evidence in the record that explains its amount.

20 Globe is entitled to the full amount of its estimate of
21 \$17,660.

22 l. Doors and Frames

23 Globe estimates \$50,909 for doors and frames. Ex. 9 at 285
24 (before 1.088 multiplier). Charter's bid is based on prior
25 projects he had worked on. Transcript at 176:12-18. He estimates
26 that installing the doors would take eight hours per door, at
27 forty dollars per hour. Id. at 177:17-178:7. For Nationwide,
28 Allen estimates \$19,238 for the doors and frames. Chart. Allen's

1 estimate is based on pre-hung, less expensive doors that, he
2 estimates, take three hours to install. Transcript at 333:7-20;
3 Allen Dec. at 10:22-26.

4 Globe failed to carry its burden to prove that its higher
5 cost is necessary for replacement. Globe is entitled to
6 Nationwide's estimate of \$19,238.

7 m. Windows Custom Redwood

8 Globe's estimate for this cost is \$70,358. Ex. 9 at 286
9 (before 1.088 multiplier). Charter received this price from a
10 subcontractor who would replicate the window frames in
11 photographs. Nationwide's estimate is \$40,615. Chart. Allen's
12 bid also relies on the photographs. Transcript at 334:21-24.
13 Allen's testimony is credible because he was willing to perform
14 the work for his bid price. See Allen Dec. at 2:16-18

15 Globe failed to carry its burden to prove that its higher
16 cost is necessary for replacement. Globe is entitled only to
17 Nationwide's estimate of \$40,615.

18 n. Skylights

19 Globe's estimate for this cost is \$3,869. Ex. 9 at 286
20 (before 1.088 multiplier). Nationwide's is \$1,968. Allen Dec. at
21 ALLCO 228 (before 1.2 multiplier).

22 Globe failed to carry its burden to prove that its higher
23 cost is necessary for replacement. Globe is entitled to
24 Nationwide's estimate of \$1,968.

25 o. Lath and Plaster

26 Globe's estimate for this cost is \$191,488. Ex. 9 at 286
27 (before 1.088 multiplier). This estimate is based on the premise
28 that 19,800 square feet require lath and plaster, id., at a price

1 of slightly more than \$9.67 per square foot after the 1.088
2 multiplier. Nationwide's estimate is \$86,016, which includes
3 \$65,520 for 12,847 square feet of lath and plaster, Chart, and
4 \$20,496 for 8,867 square feet of sheetrock and texturing,
5 Nationwide Br. at 19 & n.5. This amounts to slightly more than
6 \$5.10 per square foot after the 1.2 multiplier. The Court finds
7 that 19,800 square feet of lath and plaster is required;
8 Nationwide presented no evidence at trial explaining why sheetrock
9 would suffice to replace lath and plaster in certain areas under
10 the replacement cost measure.

11 Globe failed to carry its burden to prove that its higher
12 cost per square foot of lath and plaster is necessary for
13 replacement purposes. Globe is entitled to Nationwide's post-
14 multiplier pricing for 19,800 square feet, which totals \$100,980.

15 p. Sport Flooring

16 Globe estimates that replacing a sprung dance floor will cost
17 \$86,188. Ex. 9 at 286 (before 1.088 multiplier). The sprung
18 dance floor covered 3,516 square feet of Building 2's second
19 floor. Ex. 9 at 313. The price per square foot is \$24.513 after
20 the 1.088 multiplier. Nationwide's estimate is \$18,748 for sport
21 flooring for the 934 square feet more recently used as a martial
22 arts studio. Chart; Docket No. 82-1.

23 Following a fire in 1976, the sprung dance floor was covered
24 in plywood. Transcript at 138:7-9. Immediately before the 2006
25 fire, Building 2's second floor had been used as a martial arts
26 studio. Id. at 41:14-21. There was a partition between the
27 action mat and the seating area, which was carpeted. Id. at 42:6-
28 16. On the other side of the martial arts studio was a storage

1 area. Id. at 42:17-25, 116:3-6. That wall had been there for at
2 least fifteen years. Id. at 43:1-7. See also Ex. 56 at 7.

3 Globe failed to meet its burden to prove that all the square
4 footage of sprung dance floor is required to use it for the same
5 purpose as before the fire. See JPCS at 3. Globe is entitled to
6 934 square feet of sprung dance floor, Chart, at Globe's square
7 footage cost, or \$22,895.

8 q. Resilient Floor

9 Globe's estimate for this cost is \$5,241. Ex. 9 at 286
10 (before 1.088 multiplier). Nationwide's is \$3,535.

11 Because Nationwide presented no evidence at trial supporting
12 its calculation, the Court finds that Globe is entitled to its
13 estimate of \$5,241.

14 r. Fiber Reinforced Plastic Panels

15 Globe estimates that \$7,031 will be required to replace 1,454
16 square feet of Fiber Reinforced Plastic (FRP) panels that existed
17 in the butcher area in Building 2. Ex. 9 at 286 (before 1.088
18 multiplier). Nationwide estimates that \$3,365 will be required to
19 replace 1,304 square feet of FRP. Allen Dec. at ALLCO 205, 212,
20 214, 218, 219 (before 1.2 multiplier).

21 Globe failed to carry its burden to prove that its higher
22 cost is necessary for replacement. Globe is entitled to
23 Nationwide's price of \$3,365.

24 s. Plumbing, Sinks, Floor Drain, French Drain, Restrooms

25 Globe's estimate is \$84,622. Ex. 9 at 286 (before 1.088
26 multiplier), 323. Nationwide's estimate is \$74,186, including
27 \$7,920 for underground sewer piping, which Nationwide argues is
28 not covered. Nationwide Br. at 21.

1 The Court finds that Globe is entitled to the full amount of
2 its estimate: \$84,622. Nationwide has not presented evidence that
3 undercuts the necessity of any of the line items in Globe's
4 estimate.

5 t. Electrical

6 Globe's revised estimate is lower than the one in its
7 original estimation chart. Globe's price of nine dollars per
8 square foot remains the same, see Ex. 9 at 324, but it revises its
9 square footage to 9,700 square feet. The Court finds that Globe's
10 estimate, based on this information, is \$94,982. Nationwide's
11 estimate is \$63,283. Chart; Allen Dec.

12 The Court finds that Globe is entitled to its revised
13 estimate of \$94,982. It is not persuaded otherwise by Allen's
14 general testimony regarding building types.

15 u. Site Fencing

16 Globe estimates that it needs \$9,450 for temporary site
17 fencing. Ex. 6 at 21-22. Fencing is costing Globe \$150 per
18 month. See id. Nationwide's bid lists security fencing for the
19 first eight months of work, but lists no price. Allen Dec. at
20 ALLCO 184.

21 The Court finds that Globe is entitled to eight months of
22 fencing at \$150 per month, or \$1,200. Globe has not shown that
23 fencing in excess of eight months is necessary to replace the
24 building.

25 v. Builder's Risk Insurance

26 Nationwide's numbers, based on Allen's bids, include ten
27 percent for overhead. This overhead amount includes insurance.
28 Transcript at 344:11-16. Because Globe applied a multiplier to

1 Charter's estimates to match Nationwide's estimates, the Court
2 finds that the multipliers added and used throughout trial include
3 this form of insurance. For this reason, Globe is not entitled to
4 any additional money.

5 w. General Liability Insurance

6 The Court finds that the multipliers used by the parties to
7 align their estimates for overhead and profit purposes include
8 this form of insurance. See Transcript at 344:11-16. For this
9 reason, Globe is not entitled to any additional money.

10 x. Meat Lockers and Freezers

11 There is no mention of meat lockers and freezers in any of
12 the direct testimony submitted to the Court or in any of the pre-
13 trial papers, such as the disputed items chart submitted before
14 trial. Nor is there an entry for them in Charter's bid. See Ex.
15 9. Because Globe did not raise this issue in its direct case, the
16 Court finds that it may not do so now. Globe is not entitled to
17 any money for this item.

18 y. Depreciation Holdback

19 The parties agree that Globe will be entitled to a
20 depreciation holdback of \$92,035 once the building is completed.

21 In sum, based on the Court's resolution of each of the
22 disputed items, Globe is entitled to \$1,275,433 for Building 2.
23 This sum does not include the holdback that is not yet owed.

24 III. Building 3

25 a. Roof

26 Globe paid \$13,966 to Darin Thomsen Construction for re-
27 roofing Building 3. Ex. 2 at 160. Because the Court finds
28

1 Thomsen to be credible, it also finds that roof replacement was
2 necessary. Globe is entitled to the full amount it paid.

3 b. Gas Line Installation

4 This cost is the other half of the gas line installation cost
5 associated with both Building 1 and Building 3. As the Court
6 found for Building 1, two-thirds of this amount is not owed
7 because trenching is not covered under the contract. See JPCS at
8 3. Globe is, however, entitled to \$944, the other third.

9 c. Project Management

10 As with Building 1, the Court finds that no management fee
11 was "actually spent" that was "necessary to repair" the damaged
12 property. JPCS at 4. Globe is not entitled to this money.

13 In sum, Globe is entitled to \$14,910 for Building 3 based on
14 the Court's findings concerning the parties' disputed costs.

15 IV. Pre-judgment Interest

16 The Court concludes that damages for a breach of an
17 obligation to pay money "is deemed to be the amount due by the
18 terms of the obligation, with interest thereon." Cal. Civ. Code
19 § 3302; see also id. § 3287(a). The time for interest begins to
20 run when the defendant knew the amount owed or could have computed
21 it from reasonably available information. Chesapeake Indus., Inc.
22 v. Togova Enters., Inc., 149 Cal. App. 3d 901, 907. Where an
23 insurer contests its obligation to pay or the amount it owes,
24 interest is calculated from the date the insurer was obliged to
25 pay under its policy. See Oil Base, Inc. v. Transp. Indem. Co.,
26 148 Cal. App. 2d 490, 492 (1957).

27 The Court finds that Globe is entitled to pre-judgment
28 interest of ten percent per annum on the unpaid amounts for

1 Buildings 1 and 3 from December 10, 2007 and on the unpaid amounts
2 for Building 2 from January 31, 2013. Cal. Civ. Code § 3289(b).

3 CONCLUSION

4 Globe is entitled to \$329,038 for the disputed costs
5 attributable to Building 1, plus prejudgment interest of ten
6 percent per annum from December 10, 2007. Globe is entitled to
7 \$1,275,433 for Building 2, which includes the costs listed in the
8 Chart as undisputed, plus prejudgment interest of ten percent per
9 annum from January 31, 2013 on the amount Nationwide has not yet
10 paid. It does not include the depreciation holdback of \$92,035 to
11 which the parties agree Globe will be entitled once the building
12 is completed. Globe is entitled to \$14,910 for Building 3, plus
13 prejudgment interest of ten percent per annum from December 10,
14 2007.

15 Within fourteen days of this order, the parties shall submit
16 a joint proposed judgment that clearly states in dollar amounts
17 how much money Nationwide owes Globe, by building, based on the
18 findings in this order. The dates and rates of interest should be
19 stated. The judgment should also account for the \$92,035 holdback
20 amount owed. If the parties cannot agree, they must submit
21 separate proposed judgments with an explanation of the
22 differences.

23
24 IT IS SO ORDERED.

25 Dated: August 4, 2016



26 CLAUDIA WILKEN
27 United States District Judge
28